

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 AVERY ALLEN CHURCH JR.,

4 Plaintiff

Case No. 2:18-cv-00053-JCM-CWH

ORDER

5 v.

6 NEVADA DEPARTMENT OF
7 CORRECTIONS et al.,

8 Defendants

9
10 **I. DISCUSSION**

11 Plaintiff seeks an extension of time to file his second amended complaint because
12 he is housed in a Connecticut prison and has no access to Nevada legal materials. (ECF
13 No. 12). The Court grants the motion for extension of time. Plaintiff shall file his second
14 amended complaint on or before Friday, March 15, 2019. If Plaintiff fails to file a timely
15 second amended complaint by this date, this action shall proceed immediately against
16 Defendants Logan, Padilla, and Lozano (Count II – failure to protect) only. (See ECF No.
17 11 at 17). The Court will not grant any further extensions of time for Plaintiff to file a
18 second amended complaint.

19 Plaintiff also has filed a motion for appointment of counsel. (ECF No. 13). A litigant
20 does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights
21 claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.
22 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to
23 afford counsel.” However, the court will appoint counsel for indigent civil litigants only in
24 “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983
25 action). “When determining whether ‘exceptional circumstances’ exist, a court must
26 consider ‘the likelihood of success on the merits as well as the ability of the petitioner to
27 articulate his claims *pro se* in light of the complexity of the legal issues involved.’ *Id.*
28 “Neither of these considerations is dispositive and instead must be viewed together.” *Id.*
In the instant case, the Court does not find exceptional circumstances that warrant the

1 appointment of counsel. The Court denies the motion for appointment of counsel.

2 **II. CONCLUSION**

3 For the foregoing reasons, it is ordered that the motion for extension of time (ECF
4 No. 12) is granted.

5 It is further ordered that Plaintiff shall file his first amended complaint on or before
6 Friday, March 15, 2019.

7 It is further ordered that, if Plaintiff fails to timely file his second amended complaint,
8 this action shall proceed immediately against Defendants Logan, Padilla, and Lozano
9 (Count II – failure to protect) only.

10 It is further ordered that the motion for appointment of counsel (ECF No. 13) is
11 denied.

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13 DATED: February 7, 2019

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16 UNITED STATES MAGISTRATE JUDGE
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